



Fact Sheet

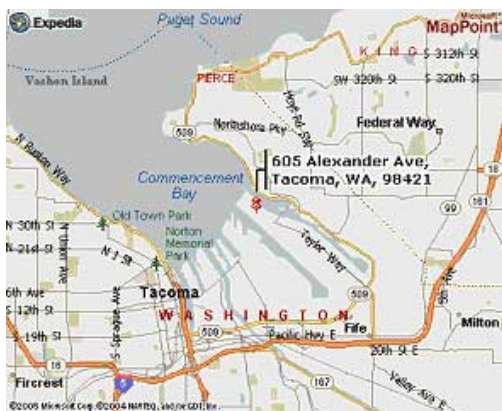
Dangerous Waste Corrective Action Permit for Occidental Chemical Corporation and Pioneer Americas LLC

The Washington State Department of Ecology (Ecology) is proposing to issue a draft permit to Pioneer Americas LLC (Pioneer) and Occidental Chemical Corporation (Occidental) for corrective action on the Occidental Site. The Occidental Site is located in the Commencement Bay industrial tide flats area of Tacoma, Washington on the peninsula between the Hylebos and Blair Waterways.

It is comprised of the 33-acre Pioneer facility, formerly owned by Occidental Chemical. It also includes portions of the Port of Tacoma, Mariana and US Navy properties, the embankment along the impacted properties, and sediments in the Hylebos Waterway. Sediment contamination resulted from historic activities occurring at the former Occidental property.

This permit is required to meet state corrective action requirements under the Hazardous Waste Management Act, RCW 70.105 (HWMA) and its regulations. The purpose of the permit is to incorporate an amended EPA Administrative Order of Consent (AOC) EPA Docket No. 10-97-0011-CERCLA (amended) into a dangerous waste management facility permit. The amended AOC provides for joint EPA and Ecology oversight of the cleanup of the Occidental site.

A final decision on this permit will be made after Ecology receives and evaluates public comments.



This fact sheet:

- ✓ Describes the facility, including the Occidental Site's history and current activities
- ✓ Summarizes requirements in the proposed permit for corrective action at the facility
- ✓ Describes Ecology's process to make final decisions on the permit

Public Comment Period
March 14, 2005 to April 28, 2005

Review the information Ecology used to make its tentative decision to issue the permit at:

Citizens for a Healthy Bay
917 Pacific Avenue, Suite 100
Tacoma, Washington 98402
Tel: (253) 383-2429

Hours at Citizens for a Healthy Bay are Monday through Friday, 9am to 5pm or by appointment. Please contact Leslie Ann Rose.

Or view the documents at the Department of Ecology, by appointment between 9 a.m. and 4:30 p.m., at:

Department of Ecology
Southwest Regional Office
300 Desmond Drive
Lacey, Washington
Tel: (360) 407-6362

Submit comments on this permit to:

Leon Wilhelm
Hazardous Waste & Toxics Reduction Program
Department of Ecology
PO Box 47775
Olympia, WA 98504-7775
Tel: (360) 407-6362
Email: leow461@ecy.wa.gov
TTY-Relay Service: 711 or 1-800-833-6388

To be accepted, comments must be postmarked or received by ***April 28, 2005***.

To receive a copy of Ecology's draft permit, contact Leon Wilhelm:

- ✓ By telephone at 360-407-6362 (voice) or 711 or 1-800-833-6388 (TTY relay service),
- ✓ By email at leow461@ecy.wa.gov or at the address above, or
- ✓ Visit Ecology's Public Events Calendar on our web site: www.ecy.wa.gov.

To receive any documents in alternate format, please contact Leon Wilhelm at the address or phone number listed above.

A. Overview

On November 16, 1988, Ecology and EPA issued Occidental Chemical Corporation, at that time the owner of the current Pioneer facility, a Permit for Storage of Dangerous Waste. The permit included provisions for the clean closure of dangerous waste management units and for corrective action.

Occidental is currently operating injection and extraction wells and a groundwater treatment plant to clean up upland groundwater contaminated from past operations.

Occidental is also currently conducting site investigations of the Occidental site as part of corrective actions to determine the remaining groundwater and sediments contaminated from past operations that need to be cleaned up.

State dangerous waste regulations require a facility to have a permit, typically valid for 10 years, until all activities, including corrective actions and final closure, are completed. Prior to expiration of the dangerous waste permit on November 16, 1998, Occidental "clean closed" all of the dangerous waste management units identified in the permit. Ecology approved the closure of these units and no further action is required for these units. This draft permit only addresses corrective action.

The corrective action provisions of the expired permit remain in effect until replaced by the corrective action provisions of this draft permit.

The purpose of the draft permit is to continue corrective actions at the Occidental site. Although there is presently no treatment, storage, or disposal of any dangerous waste at the Occidental site, Occidental is conducting corrective actions to correct or clean up past contamination from management dangerous wastes. The permit incorporates by reference the amended AOC which provides for corrective actions at the site pursuant to the authority of the Revised Code of Washington (RCW) 70.105D.050(1), the Model Toxics Control Act (MTCA) and CERCLA regulations.

B. Procedures for Reaching Final Decisions

The draft permit is subject to public review and comment. Ecology will consider all public comments before making the final decision on this draft permit. Regulatory requirements for the public review process are described in Washington Administrative Code (WAC) 173-303-840(3) through (9).

Comment Period

The 45-day comment period on Ecology's tentative decision to issue this draft dangerous waste management facility permit for corrective action runs from ***March 14 to April 28, 2005***. See the first page of this fact sheet for more information.

Public Hearing Possible

If ten (10) or more people request a public hearing, Ecology will conduct a public hearing. To request a hearing, or to request special accommodation for the hearing if it is held, contact Leon Wilhelm by phone, letter, or email by ***April 6***. If fewer than 10 people request a public hearing, the hearing will not be held.

To find out if a public hearing will be held and/or its date and location, contact Leon Wilhelm after ***April 11, 2005***. If you have special accommodation needs for the hearing, please contact Mr. Wilhelm.

How to Participate

You may request, and review and comment on, the draft permit. The files containing information Ecology used to make the decision are also available for review; see page 1 for locations and hours of availability.

For comments to be considered by Ecology in further evaluation of the proposal, they must be received at Ecology by the deadline on page 1.

The most effective comments are those in which the commenter:

- ✓ Provides specific information describing what condition he or she believes is inappropriate
- ✓ Provides factual and regulatory support for the comment
- ✓ Suggests changes to fix the problem
- ✓ Includes supporting material, unless Ecology already has the material. For example, if the comment references a state or federal rule on managing dangerous waste, Ecology already has that information. If the comment references a report or letter that is not included in the agency files for the Occidental site or is not a commonly available reference, then Ecology likely does not have it. In such cases, the person commenting needs to provide a copy of the reference.

Furthermore, WAC 173-303-840(6) provides details on the obligation to raise issues and provide information during the public comment period for a permit if a person believes a condition of the draft permit is inappropriate.

Decision-Making Process

Responding to comments and testimony

Ecology will consider and respond to written comments submitted by the public and any testimony if the public hearing is held.

Final permit decision

After considering the comments and testimony, Ecology will make a final permit decision or make a new tentative decision on the permit. Any final permit for the Occidental site will run for ten years from the effective date. However, the permit can be modified at any time during this period. Permit modifications are subject to public review and comment. Procedures for modifying a permit and the types of permit changes that are subject to public review and comment are discussed in WAC 173-303-830. Ecology will sign the final permit and will give public notice of the final permit decision.

Effective date of decision

Normally, a permit is effective 30 days after Ecology gives notice of the final decision to the permittee(s) and all persons who commented. If there are no comments on the draft permit, Ecology may specify an earlier date for the final permit. If Ecology makes a new tentative decision on the permit, there will be a new comment period.

Environmental Review

The Department of Ecology is the State Environmental Policy Act or SEPA lead agency for corrective action at the Occidental site. Under SEPA, the identification and evaluation of probable environmental impacts is required to develop environmentally sound proposals.

When the original joint permit was issued in 1988, Ecology was not authorized for corrective action and corrective actions at permitted facilities were regulated by EPA. When the permit was modified in 1996 to include corrective action, EPA remained the lead agency for administering corrective action under the joint permit and corrective action was administered under EPA's RCRA authorities. Although the lead agency status for the site transitioned to Ecology in 1998 just prior to expiration of the joint permit, the corrective action provisions in the joint permit remain in effect until this draft permit is issued.

The purpose of this draft permit is to incorporate the amended Administrative Order on Consent EPA Docket No. 10-97-0011-CERCLA (amended AOC) providing for joint EPA and Ecology oversight of corrective action at the Occidental site. The amended AOC provides for incorporation of the MTCA cleanup regulations in addition to CERCLA regulations. SEPA, in turn, provides for the integration of the MTCA process into SEPA decision making.

Ecology has determined to defer issuing a SEPA determination until cleanup alternatives for the Occidental site are recommended and issued for public comment.

Appealing the Final Permit Decision

Anyone who comments on a permit, or who participates in a public hearing, if held, may appeal the agency's final decision within 30 days of the date the decision is issued. Others may appeal changes made between the draft permit and the final permit, even if they did not comment during the comment period. The agency's final decision on the permit may be appealed to the Pollution Control Hearings Board. However, the amended AOC may not be appealed to the Pollution Control Hearings Board.

Because of EPA's oversight authority, EPA is not required to go through the Pollution Control Hearings Board to appeal state authorized permits. Should EPA appeal, they would work directly with Ecology.

For more information, contact Leon Wilhelm (Ecology) at (360) 407-6362.

C. State and Federal Authorities for Permits and Corrective Action

In Washington State, both the EPA and Ecology regulate hazardous waste. Washington regulates more wastes than the federal EPA; this universe of Washington regulated wastes is called *dangerous wastes*.

The Washington State Hazardous Waste Management Act, Chapter 70.105 RCW, and the Dangerous Waste Rules, Chapter 173-303 WAC, regulate the management of dangerous waste in Washington. WAC 173-303-800 specifies facilities which must obtain a permit. WAC 173-303-646 specifies that facilities that have had a permit to treat, store, and/or dispose of dangerous waste, must have a permit to conduct corrective action. Also, facilities which no longer treat, store, and/or dispose of dangerous waste but which have had historic releases from solid waste management units must also have a permit to conduct corrective action. Therefore, although all former dangerous waste management units at the Pioneer (former Occidental) facility have been clean closed, the facility is required to have a permit to conduct corrective action.

EPA has requirements for facilities that manage hazardous waste or conduct corrective action. The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) and the Hazardous and Solid Waste Amendments of 1984 (HSWA), and the regulations promulgated thereunder in Title 40 of the Code of Federal Regulations (CFR), regulate the management of hazardous waste nationwide.

On January 31, 1986, the State of Washington's dangerous waste management program received final authorization for the state's hazardous waste program. The State's program has also received approval for subsequent revisions to this federal program. Ecology adopted additional federal requirements that went into effect June 10, 2000.

EPA authorized the state's corrective action program on November 4, 1994. Under the federally authorized program, a MTCA order or other administrative mechanism incorporating MTCA or state cleanup requirements, is considered to be part of the authorized corrective action program only when the order or other administrative mechanism is incorporated into an existing permit, or when a MTCA order or other administrative mechanism is issued simultaneously with and incorporated by reference into a new permit. In other words, any order or other administrative mechanism issued to a facility incorporating MTCA requirements is not considered part of the EPA-authorized corrective action program unless the order or other administrative mechanism is directly incorporated into a permit. For this reason the amended AOC has been incorporated by reference into this permit and the amended AOC and its attached Scope of Work are enforceable conditions under this permit.

Terms of agreed orders or administrative mechanisms which go beyond the scope of the authorized program are considered broader in scope and thus not enforceable by EPA. However, the state can impose requirements pursuant to state laws or enforce those requirements in lawfully issued orders and other administrative mechanisms or permits. Permits issued under the authorized program will be enforceable by both Ecology and EPA.

Substantial changes to the amended AOC will require a public comment period under MTCA and a modification to the permit.

MTCA Orders or other administrative mechanism incorporating MTCA requirements (the state cleanup authority or Model Toxics Control Act) are being used to satisfy corrective action requirements. This permit shell ("Permit Lite") is being issued to incorporate by reference the amended AOC. This process has been used to save time and resources, eliminate duplication of a permit, reduce the volume of documents, and simplify the decision process.

D. Facility Description

The Pioneer facility, located within the Occidental site, consists of 33 acres and is currently owned by Pioneer. Pioneer acquired the facility in 1997 with the exception of the groundwater treatment system which was retained by Occidental. At that time, the RCRA permit was modified to show Occidental as the sole permittee with respect to corrective action. Both Occidental and Pioneer are both named as permittees on this draft permit.

Media of concern at the site include groundwater, soil, and sediment. Contaminants at the site include chlorinated solvents, found in all media, with elevated pH in portions of the groundwater.

E. Permit and Permit Conditions

This permit, including the amended AOC it incorporates, meets the state requirements for corrective action at the Occidental site. Although the Occidental site does not currently manage dangerous waste, Occidental and Pioneer are seeking a permit for corrective actions due to historic releases from past management of dangerous waste.

This corrective action-only permit differs from dangerous waste management permits for fully functioning facilities. Ecology has been working with EPA to develop this type of permit. While a permit is required, EPA and Ecology recognize that not all usual permit requirements are necessary in a permit for conducting corrective actions only. For example, training and inspection requirements for management of dangerous wastes are irrelevant when the facility has closed and no dangerous wastes are present on site.

A permit is necessary to maintain authority over corrective action, but the substantive requirements for actually conducting the corrective action are in the amended AOC. The draft permit is structured to allow flexibility needed to efficiently administer corrective action at the site.

Permit conditions for this draft permit are abbreviated; the purpose of this permit is to provide a framework for incorporating the amended AOC into a dangerous waste management facility permit.

The dangerous waste permit will not regulate current activities at the Occidental site performed by entities other than named permittees such as the Port of Tacoma companies leasing property located within the Occidental site. Clean up activities not described in the amended AOC or its attached Scope of Work will not be regulated by this permit.

The amended AOC and attached Scope of Work require the following work (summarized):
Perform investigation of groundwater discharging in the sub tidal area of the Hylebos Waterway
Complete remaining site investigations in the upland area.

- Perform investigation of groundwater discharging in the sub tidal area of the Hylebos Waterway.
- Complete remaining site investigations in the upland area.
- Prepare a comprehensive report characterizing the site based on a compilation of results of past and current site investigations.
- Evaluate and recommend alternatives for comprehensive cleanup of groundwater and sediments.
- Issue recommended alternatives for public comment along with SEPA determination for recommended alternatives.
- Develop and implement interim measures to address groundwater with elevated pH that will potentially adversely impact selected alternatives.
- Remedial design of recommended alternatives for groundwater and sediments modified as necessary based on results from public comment.

In about three years, Occidental will complete work under the amended AOC and attached Scope of Work, including preparation of detailed designs of the selected groundwater and sediment alternatives and implementation of interim measures to address groundwater with elevated pH. A consent decree will then be negotiated with Occidental or other administrative mechanism will be imposed that will govern implementation of the selected groundwater and sediment alternatives. This consent decree or other administrative mechanism will be incorporated into the permit by a permit modification. Public comment will be a part of this permit modification process.

F. Changes to RCRA/RCRA Rules Under Hazardous and Solid Waste Amendments

In general, new or amended requirements in the Hazardous and Solid Waste Amendments of 1984 and related regulations will automatically apply to the Occidental site's corrective action activities as applicable. The exception is for new requirements that are less stringent than those in effect when the agency issues the permit.

G. Conclusion

Ecology has determined that there is adequate information to issue the permit to continue corrective action. Therefore, Ecology has made a tentative decision to issue the permit to Pioneer and Occidental for corrective actions to be carried out under the amended EPA Administrative Order on Consent EPA Docket No. 10-97-0011-CERCLA.

